

Counts COPY

1 of 14

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

RECEIVED

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

ALONZO AUSTIN

Plaintiff

v.

Case Number

GLOBAL CONNECTION INC. 3:07-CV-042 MEF

OF AMERICA et, al.

Defendants

PLAINTIFF MOTION FOR SUMMARY JUDGMENT.

COMES NOW, Plaintiff ALONZO AUSTIN, and Moves this Honorable Court for the entry of an order Granting its Motion For Summary Judgment pursuant to Rule 56(C) of the Federal Rules of Civil Procedure, in its Favor and against Defendant's GLOBAL CONNECTION INC OF AMERICA et, al., ON the grounds that there is no genuine issue as to any material fact and the plaintiff is entitled to Judgment as a matter of Law.

IN support of this motion Plaintiff refers to the record in this action, including the Complaint, the Answer to it, and Plaintiff attached Affidavit, Brief and exhibits, etc

Respectfully Submitted,

Alonzo Austin, Pro Se

1321 Oliver-Carlis Rd., Tuskegee, AL 36083, PH# 334-727-5476

ALONZO AUSTIN

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ALONZO AUSTIN,
Plaintiff

V.

CASE NO. 3:07-CV-042-MEF

GLOBAL CONNECTION,
INC. of America et al.
Defendants.

Affidavit in Support of Motion for Summary Judgment.

STATE OF ALABAMA, ss.

COUNTY OF MACON;

ALONZO AUSTIN, who, being first duly sworn
deposes and says:

I am ALONZO AUSTIN, and have personal knowledge
of the facts set forth.

This affidavit, is submitted in support of the
Plaintiff, Motion for Summary Judgment, for the
purpose of showing that there is in this action
no genuine issue as to any material fact and
that the Plaintiff, is entitled to Judgment as a
matter of Law.

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2. Plaintiff, entered into an Agreement orally on November 11, 2005, with Defendant to provide Local Telephone Service. Shortly thereafter during the same conversation on the same date as mentioned above the inducement of 100 free minutes of Long Distance Service was offered by Defendant to Plaintiff and also a \$3⁰⁰ credit for payment, by Credit Card which Plaintiff accepted, as previously stated in Plaintiff's Complaint correctly. ~~As~~ Defendant, did not accept personal checks, leaving Plaintiff, with the other option of mailing money order, and risking the payments late arrival after the due date.

Which could as explained to Plaintiff, by Defendant, cost a late fee of \$10⁰⁰ and in addition reconnection fee of \$30-\$50 after a disconnection for past due amount.

3. Plaintiff agree with Defendant's Statement in his Affidavit response at paragraph #3.

4. Paragraph #4 is a misrepresentation by Defendant, for proof that this is untrue, see exhibit "C". No such terms for free long distance minutes exist on this mailed invoice.

5. Paragraph #5 Plaintiff agrees with Defendant.

6. Paragraph #6 untrue again, see exhibit "C".
(No accounting exist to support Defendant's Contentions.)

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7. Paragraph #7 is a bold Face Misrepresentation!!! as Plaintiff has already Submitted documented evidence via exhibit "A" that makes it clear that Plaintiff was a Customer of Freedom Communication of Tennessee, per Complaint.

8. Paragraph #8 is not correct and is a non issue made so by plaintiff, Switching to Freedom Communications, on 1/6/06, thereby Terminating Agreement.

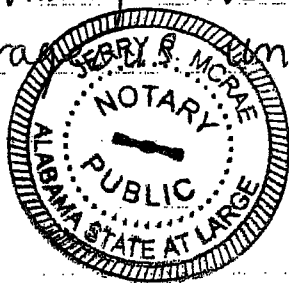
9. Paragraph #9 is also untrue, and a non issue as contract ended on 1/6/06 with Defendant.

10. Paragraph #10, The Wanton and Fraudulent misrepresentation with malice and knowledge with a reckless disregard for the Consumer rights of Plaintiff Occurred on 11/11/05, 12/06/05, 1/06/06 and 1/12/06 by Defendant, credit Card Fraud, Wire Fraud, & Mail Fraud can not be over Come by Defendant's Expressed Denial, with out any offer of evidentiary Proof as required.

11. Paragraph #11 is one more Untruth by Defendant as No evidence of the 100 Freeminutes promised to Plaintiff by Defendant was ever tendered as Defendant's Claim (No proof exist via Invoice!!!)

Finally the Defendant's Affidavit, is Full of Outrages, Untruths and Misrepresentations

by. Along with, Pros.



Jerry B. McRae, Notary

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BRIEFI. THE FACTS.

(1) Plaintiff, ALONZO AUSTIN, brought this Action against Defendant's, GLOBAL CONNECTION INC. OF AMERICA et.al., ON JANUARY 12, 2007 alleging that on November 16, 2005, Plaintiff, entered into an agreement orally with Defendant to received phone Services including (100) free Long distance minutes if I permitted Defendant to automatically draft my Credit Card on a Monthly basis, with an Agreed upon date on the (7th).

(2) After the Defendant's failed to tender the Agreed upon (100) Free Long distance Minute for the months of November, 2005 and December, 2005 after repeated attempts by Plaintiff, to receive Same. Plaintiff, Terminated the Agreement between ALONZO AUSTIN, and Defendant's, GLOBAL CONNECTION INC. OF AMERICA et.al. Orally Pursuant to the Agreement on 1/06/06.

(3) Plaintiff ALONZO AUSTIN, Entered into an Agreement for phone Services ON 1/06/06 with Freedom Communications U.S.A., P.O. BOX 1995, DICKSON, TN. 37056. Prior to its Termination with the Defendants, GLOBAL CONNECTION INC. OF AMERICA et.al., in the afternoon on day in question.

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(4) Plaintiff, ALONZO AUSTIN, Notified Defendant's GLOBAL CONNECTION OF AMERICA INC. et al. by Telephone that I was Terminating our Phone Service Agreement and that I had a new Telephone Service Carrier FREEDOM Communication USA, OF DICKSON, TN. on January 06, 2006. And to refrain from drafting my Credit Card Account on the due date of the 7th of January, 2006. Defendant's ignored Plaintiff demand and notice of termination and instead drafted Plaintiff, ALONZO AUSTIN, Credit Card account.

(5) A Few days Later Defendant's Global Connection INC. OF AMERICA et al, Mailed a Check to Plaintiff ALONZO AUSTIN dated January 12, 2006.

(6) It wasn't until Plaintiff Credit Card Account Summary (the February 2006 Statement) that I was first made aware of the Defendant's, GLOBAL CONNECTION INC OF AMERICA et al, unlawful action with respect to the drafting of my Credit Card on January 06, 2006. without my knowledge or consent but even more shocking was the fact that this Credit Card transaction was done after I demanded that they not do so!!

Therefore given the above aforementioned facts Plaintiff, asserts claims against Defendant's, for its failure to deliver the (60) free minutes as promised on 11/11/05, as an inducement to Plaintiff, agreeing to allow Defendant's to

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Draft Plaintiff Credit Card for the monthly phone service due on the 7th of each month. With the added Free (100) Long Distance Minutes each month as a bonus feature.

As well as the Defendants drafting of Plaintiff Credit Card account on January 6, 2006 after Termination Notice by Plaintiff, with a warning Not to do so. And for later mailing a check dated 1/12/06 to Plaintiff with no accountability whatsoever. Outside of our legal oral agreement between 11/11/05 & 1/6/06.

II STATEMENT OF LAW AND STANDARD OF REVIEW.

A. A party in a law suit may move a court to enter summary judgment before trial. FED. R. CIV. P. 56(a) and (b). Summary judgment is appropriate when the moving party establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). Celotex Corp. v. Catrett, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 91 L. Ed. 2d. 265 (1986) Gonzalez v. Lee County Housing Authority, 161 F.3d 1290, 1294 (11th Cir. 1998)

A material fact is one "that might affect the outcome of the suit under the governing law," and a dispute about a material fact is "genuine" "if the evidence of the suit is such that

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a reasonable Jury could return a verdict for the nonmoving party," Id; see also *Slomcenski v. Citibank, N.A.*, 432 F. 3d 1271, 1277 (11th Cir. 2005). Once the movant meets its burden under Rule 56, the non-movant must designate specific facts showing there is a genuine issue for trial. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

The party opposing Summary Judgment must respond by setting forth specific evidence in the record and articulating the precise manner in which that evidence supports his or her claim, and may not rest upon the mere allegations or denials of the pleadings. FED. R. CIV. P. 56(e); *Johnson v. Board of Regents of University of Georgia*, 263 F. 3d 1234, 1264 (11th Cir. 2001)

B. PLAINTIFF SHOULD RECOVER UNDER SECTION §1964(C) PURSUANT TO 18 U.S.C. § 1962 (a) (b) AND (C) OF THE RACKETEER INFLUENCED AND CORRUPTION ORGANIZATION ACT.

THE Supreme Court has held in *Sedima* that a "racketeering injury" apart from the predicate acts was not required to recover under Section 1964(C) which allows a

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Private Suit by a person injured by a violation of Section 1962. Sedima, 473 U.S. at 495, 105 S.Ct. at 3285. The Court explained that Section 1962 makes it unlawful to use money acquired from a pattern of racketeering to invest in an enterprise, 18 U.S.C. § 1962(a); to acquire control of an enterprise through a pattern of racketeering activity. Id. § 1962(b) or to conduct an enterprise through a pattern of racketeering activity. Id. § 1962(c). The Court stated.

If the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activity injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c).

Mail and wire fraud just like common law fraud, entail intention to induce victim to act or to refrain from action in reliance upon misrepresentation. 18 U.S.C. §§ 1341, 1343.

Also mail or wire fraud occurs when person intentionally participates in scheme to defraud another of money or property and uses mail or wires in furtherance of that scheme. Id.

10/7/14

Plaintiff has supported ~~its~~ claim with Complaint, Affidavit, Exhibits and this instant brief, while Defendants have not presented ~~one~~(1) scintilla of evidence to support its contention that it tender (100) free minute to plaintiff, via its Affidavit. Doc. 10 exhibit 'A'.

Finally after the Completion of Discovery Defendant has failed to present a single exhibit showing proof of an invoice detailing 100 Free Long distance minutes per its Affidavit Doc. 10 exhibit 'A'; Absent of same Plaintiff should prevail given the fact that it is undisputed that plaintiff paid \$69.99 for phone services ~~on~~ 11/11/05 and \$39.99 on 12/7/05 plus to \$16.99 unlawfully drafted from my credit card on 01/06/06. total \$156.97 Actual Damages Due and owing Plaintiff from Defendants GLOBAL CONNECTION INC. OF AMERICA et. al.

Moreover it is undisputed that the drafting of Plaintiff Credit Card on the 6th of January, 2006. constitute wire fraud, as the wire were used with a transaction involving interstate Commerce in combination with the mailing of the mysterious check, which constitutes mail fraud, with the common law fraud of the promise and failure to tender the 100 Free Long distance minutes.

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Therefore in the interest of Justice RICO damages should be granted pursuant to Mail and Wire, ~~and~~ Common Law Fraud pursuant to F.R.C. P. 9(b). Actual Damages \$156,977 PLUS Cost, interest and \$100,000.00 Punitive.

III. CONCLUSION

Based upon the foregoing undisputed facts and applicable Case Law, Plaintiff, ALONZO AUSTIN, respectfully request that this Honorable Court, issue an order granting Plaintiff ALONZO AUSTIN, Motion For Summary Judgment, Against Defendant's Global CONNECTION INC. OF AMERICA et.al.

Respectfully Submitted,

~~Alonzo Austin~~ ~~pro se~~
by ~~Alonzo Austin~~ ~~pro se~~
ALONZO AUSTIN
1521 Oliver-Carlis Rd.
Tuskegee, AL, 36083
Ph # (334) 727-5476

12714

CERTIFICATE OF SERVICE

I ALONZO AUSTIN, hereby certify that I have served copies of the foregoing documents upon.

GLOBAL CONNECTION INC. OF AMERICA et al
c/o MCKOON THOMAS MCKOON
P.O. Box 3220

Phoenix City, AZ 85068-3220

The Defendants, by placing same in the U.S. mail postage prepaid on the 31st of January 2008.

Alonzo Austin Prose

ALONZO AUSTIN

1321 River-Carlis Rd,

Tuskegee, AL 36083

Ph# (334) 727-5476

| 5490 9916 1669 9100 | | | | \$31,700.00 | | \$31,700.00 | 30 | 02/06/06 | \$0.00 | 03/02/06 |
|--|------------------|------------------|-----------|-------------|----------------------|--|----|----------|----------|---------------|
| Posting Date | Transaction Date | Reference Number | Card Type | Category | Transactions | | | | Charges | Credits (CR) |
| FEBRUARY 2006 STATEMENT | | | | | | | | | | |
| PAYMENTS AND CREDITS | | | | | | | | | | |
| 01/18 | | 4267 | MC | | PAYMENT - ELECTRONIC | | | | | 1,750.00 CR |
| PURCHASES AND ADJUSTMENTS | | | | | | | | | | |
| 01/09 | 01/06 | 4977 | MC | C | ✓ | GLOBAL CONNECTION INC/ ATLANTA GA | | | 46.99 | |
| 01/09 | 01/06 | 0108 | MC | C | | FREEDOM COMMUNICATIONS 615-2292133 TN | | | 70.38 | |
| 01/10 | 01/09 | 2289 | MC | C | | WAL-MART #0356 SE2 AUBURN AL | | | 47.24 | |
| 01/10 | 01/09 | 2769 | MC | C | | AMP ACORN MEDIA PUBLIN 888-870-8047 MD | | | 52.95 | |
| TOTAL FOR BILLING CYCLE FROM 01/08/2006 THROUGH 02/06/2006 | | | | | | | | | \$217.56 | \$1,750.00 CR |

Exhibit T A

CREDIT BALANCE PLEASE DO NOT PAY

IMPORTANT NEWS

ENJOY THE CONVENIENCE AND FLEXIBILITY THE ENCLOSED CHECKS OFFER.

LOOKING TO SAVE ON YOUR AUTO LOAN? WHETHER IT'S A NEW LOAN OR REFINANCING AN EXISTING ONE, VISIT WWW.MBNA.COM/LOANS TO SEE HOW YOU COULD SAVE!

NEED THE PERFECT GIFT FOR YOUR VALUED EMPLOYEES, RESPECTED COLLEAGUES, OR CLOSE FRIENDS? FIND GIFT CARDS FOR EVERY OCCASION AT WWW.MBNAGIFTCARD.COM.

SUMMARY OF TRANSACTIONS

| Previous Balance | (-) Payments and Credits | (+) Cash Advances | (+) Purchases and Adjustments | (+) Periodic Rate FINANCE CHARGES | (+) Transaction Fee FINANCE CHARGES | (=) New Balance Total | TOTAL MINIMUM PAYMENT DUE | |
|------------------|--------------------------|-------------------|-------------------------------|-----------------------------------|-------------------------------------|-----------------------|----------------------------------|--------|
| \$1,452.76 | \$1,750.00 | \$0.00 | \$217.56 | \$0.00 | \$0.00 | \$79.68 CR | Past Due Amount | \$0.00 |
| | | | | | | | Current Payment | \$0.00 |
| | | | | | | | Total Minimum Payment Due | \$0.00 |

FINANCE CHARGE SCHEDULE

| Category | Periodic Rate | Corresponding Annual Percentage Rate | Balance Subject to Finance Charge |
|------------------------------|-----------------|--------------------------------------|-----------------------------------|
| Cash Advances | | | |
| A. BALANCE TRANSFERS, CHECKS | 0.024630% DLY * | 8.99% | \$0.00 |
| B. ATM, BANK | 0.069150% DLY * | 25.24% | \$0.00 |
| C. PURCHASES | 0.069150% DLY * | 25.24% | \$0.00 |

FOR THIS BILLING PERIOD:
ANNUAL PERCENTAGE RATE.....SEE ABOVE

* Periodic Rate May Vary

FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY

- For Customer Satisfaction and up to the minute automated information including balance, available credit, payments received, payments due, due date, payment address information, or to request duplicate statements, call 1-800-789-6685.
- For TDD (Telecommunication Device for the Deaf) assistance, call 1-800-346-3178.
- Mail payments to: MBNA AMERICA, P.O. BOX 15287, WILMINGTON, DE 19886-5287.
- Billing rights are preserved only by written inquiry. Mail billing inquiries, using form on the back, and other inquiries to: MBNA AMERICA, P.O. BOX 15026, WILMINGTON, DE 19850-5026.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

USE011

5490 9916 1669 9100

6257 517 Y 6YK 0309 1300 00

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Atlanta, Georgia 30362

Local # (770) 457 - 7174

Toll Free # (877) 511 - 3009

Account / PIN # 5550100131 1

****AUTO**MIXED AADC 300**

ALONZO AUSTIN
1321 OLIVER-CARLIS Rd
Tuskegee AL 36083-3739

|||||

33 7542

978801

| | |
|--|-------------------------|
| Invoice Date December 20, 2005 | Telephone Number |
| Due Date January 07, 2006 | (334)-727-5476 |

| Description of Service | | Amount |
|---|------------------|--|
| Global Silver Package (10 CF) | 1/7/06 to 2/6/06 | \$56.99 |
| BASIC SERVICE - BS | \$38.85 | |
| ld 12-20-05 | \$10.00 | |
| FCC CHARGE | \$6.50 | |
| AL UTILITY PRIVILEGE LIC. TAX | \$1.80 | |
| MACON CO. 911 SURCHARGE | \$1.50 | |
| FEDERAL EXCISE TAX | \$0.90 | |
| FED. UNIVERSAL SERVICE FUND | \$0.29 | |
| AL DUAL-PARTY RELAY SYS. FUND | \$0.15 | |
| Credit for the Credit Card payment | \$-3.00 | |
| To Avoid Disconnection Pay Past Due Balance Immediately | | Credit Bal. DO NOT PAY \$-10.00 |
| <i>Your last payment was made on 12/8/05 for 10.00</i> | | Current Bal. \$56.99 |
| **Due to rate changes and related usage charges, customers with the area plus service will be charged a \$20.00 service charge monthly in addition to the standard GCIA monthly service charges. | | Total Bal. \$46.99 |

When Mailing In Payment, Make MONEY ORDER Payable To Global Connection, Inc. of America.

Include Account # OR Telephone # When Making Payment.

A \$10.00 Late Fee Will Be Applied To Accounts When Payment Is Not Posted By Due Date. Your Telephone Line Is Subject To Immediate Disconnection If Payment Is Not Received By Due Date. Based On Service Provider, A Reconnection Fee Of \$30-\$50 And Additional Charges For Service Package Will Apply. All Charges And Any Past Due Balance Must Be Paid In Full Before A Reconnection Is Processed.

Detach and return bottom portion with your payment...THANK YOU !!! -- Envie la parte de abajo con su pago...GRACIAS

Account / PIN #: 5550100131 1

Telephone Number : (334)-727-5476

Customer Name : ALONZO AUSTIN

PAY BY
1/17/06

| | | |
|-------------|----------|--------|
| Credit Bal. | \$-10.00 | 978801 |
|-------------|----------|--------|

Total Bal.: \$46.99

Amt Enclosed : \$_____

Long Distance Payment * (Optional)

I have enclosed an additional \$ _____ for the purchase of my long distance minutes for low cost of 5.9 cent per minute.

Global Connection Inc. of America

PO Box 48269, Atlanta, Georgia 30362

* If this invoice is **PAID IN FULL**, GCIA will issue a refund in the event of switching to another carrier or disconnection occurs prior to Bill Due Date, minus a **\$25 processing fee**. GCIA will **NOT** issue any refunds for Partially Unused Service. The amount paid toward long distance minutes will not be applied to your GCIA Service for any reason. Promotional offers may expire without notice. Cualquier ofertas de GCIA pueden expirar sin aviso al cliente. **WE NO LONGER ACCEPT PERSONAL CHECKS.**